IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8075 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

LALLUBHAI H VASAVA

Appearance:

1. Special Civil Application No. 8075 of 1992

MR HARDIK C RAWAL for Petitioner No. 1

MR JS BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/04/2002

ORAL JUDGEMENT

Heard learned advocate Mr. Raval for the petitioner corporation and Mr. J.S. Brahmbhatt for the respondent workman. By way of this petition, the petitioner has challenged the award made by the labour

court Baroda in Reference No. 48 of 1988 dated 6th July, 1992 wherein the labour court wherein the labour court has granted reinstatement with continuity but without back wages for the intervening period. This petition was admitted by this court by order dated 20.1.1993 and the matter was ordered to be expedited and no interim relief has been granted by this court.

Mr.Raval for the petitioner has submitted that the the respondent has recovered fare of Rs.2.00 from three passengers but has not issued ticket to the said passenger and on that basis, he has been served with charge sheet and after completion of the departmental inquiry, he has been dismissed from service. He has submitted that in view of the serious charge levelled against the respondent, the labour court has committed an error in granting reinstatement to the respondent when the misconduct has been proved against the respondent workman. He has further submitted that the labour court has committed serious error in exercising the discretion vested in it under section 11A of the I.D. Act, 1947 in favour of the respondent workman in view of the serious charge which he was facing and which was proved before the labour court. According to his submission, mere denial of back wages, in such cases, cannot be considered to be sufficient punishment. Thus, it was his alternate submission that the labour court ought to have imposed some punishment while making the award of reinstatement with continuity of service without back wages.

On the other hand, learned advocate Mr. Brahmbhatt appearing for the respondent workman has submitted that only two rupees were recovered for which tickets were not issued According to him, the workman was recently transferred at Mofusil Depot and he was not aware and, therefore, such misconduct has been committed. According to him, this explanation was rightly considered by the labour court and he was not able to calculate the fare properly because he was recently transferred to Mofusil Depot. He has submitted that this was rightly considered by the labour court and the labour court considering his four years' past service, exercised the powers and granted reinstatement with continuity of service. According to him, while reinstating him, the labour court has denied back wages from 3.6.1987 to 6th July, 1992 and denial of this five years' back wages is sufficient punishment looking to the misconduct and explanation given by the workman. Thus, it was his submissions that no further punishment should be imposed by this Court.

I have considered the submissions made by the learned advocates for the parties. I have also perused the award made by the labour court concerned. The labour Court has observed that looking to the amount involved in this case and also looking to four years' service rendered by the workman and the explanation tendered by the workman concerned, punishment of dismissal from service is harsh and unjustified. The labour court has also observed that if the bus would not have been checked at that particular point of time, then, there was an opportunity with the workman to misappropriate the amount in question and considering this aspect of the matter, the labour court denied the back wages by way of punishment while granting reinstatement with continuity of service. However, in such case, when the misconduct of collection of fare without issuance of tickets has been found to be proved, question of granting back wages does not arise at all. Therefore, some further punishment is required to be imposed. I am of the view that the labour court was right in considering the explanation of the workman and also in considering four years' service rendered by the workman. The labour court has not committed any error in granting reinstatement without back wages but some punishment was required to be imposed looking to the misconduct in question.

According to my opinion, the labour court was justified in granting reinstatement in favour of the workman. Reasons given by the labour court for reinstating the workman are cogent and convincing. Therefore, that part of the award in question does not require any interference of this court but some further punishment is required to be imposed. According to my opinion, mere denial of back wages in such case cannot be considered to be sufficient punishment because even otherwise the respondent workman is not entitled to back wages as a matter of right. According to my opinion, while making the award of reinstatement with continuity of service without back wages for the intervening period, some punishment ought to have been imposed by the labour court. I am of the view that it would be just and proper if two annual increments of the respondent workman are stopped with future effect in the facts and circumstances of the case. To that extent, the award in question is required to be modified.

Accordingly, this petition is partly allowed. The award made by the labour court in Reference No. 48 of 1988 dated 6th July, 1992 is confirmed and the

petitioner corporation is further directed to stop two annual increments of the respondent workman with cumulative effect, by way of punishment. Rule is made absolute accordingly with no order as to costs.

11.4.2002. (H.K. Rathod,J.)

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